

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ROAN P.,

Claimant,

vs.

GOLDEN GATE REGIONAL CENTER,

Service Agency.

OAH No. N 2007010030

**DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in San Francisco, California, on April 11, 2007.

Claimant was represented by his father, Paolo P.

Paul Ogilvie, M.S.W., Assistant Chief, Social Work Services, represented service agency Golden Gate Regional Center (GGRC).

The record was left open to permit claimant and GGRC to submit additional evidence and argument. On April 16, 2007, claimant submitted an article by Deborah J. Fidler, Ph.D., which was admitted as Exhibit II, and various documents from Sara Rosenfeld-Johnson, M.S., which were admitted as Exhibit III. On April 20, 2007, GGRC submitted written argument, which was marked as Exhibit 13. Claimant submitted written argument in response, which was received on April 24, 2007, and marked as Exhibit IV. The record was closed and the matter was deemed submitted on April 24, 2007.

**ISSUE PRESENTED**

Is GGRC obligated to fund Floortime and oral motor therapy for claimant under the Lanterman Act,<sup>1</sup> now that claimant is over three years of age?

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<sup>1</sup> Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq.

## FACTUAL FINDINGS

1. Claimant is a four-year-old boy with a diagnosis of Down syndrome (Trisomy 21). His date of birth is March 26, 2003. Claimant's parents requested that GGRC fund Floortime and oral motor therapy for claimant. GGRC denied their request, and claimant's parents appealed.

2. Before claimant turned three years of age on March 26, 2006, GGRC funded Floortime and oral motor therapy for him under the "Early Start" program, or what GGRC refers to as its "Part C" program.<sup>2</sup>

Claimant's medical professionals first recommended Floortime in mid-2005, when claimant was almost two and one-half years old. Roger Morrison, M.D., encouraged claimant's parents "to pursue various occupational and physical therapy techniques, including FloorTime [sic]. FloorTime technique is particularly well-suited to children with Trisomy 21 due to its emphasis on high-affect interaction which helps in terms of social engagement, cognitive, motor and language development." Theresa A. Hong, D.O., recommended Floortime to "support [claimant's] visual processing and social engagement delayed due to his Trisomy 21. He needs the most support in language development and motor development at this critical period of time . . . ." Psychologist Barbara Kalmanson, Ph.D., suggested Floortime services as an intervention to motivate claimant "to work on motor and communication skills." She reported that claimant showed progress from the time of his initial assessment:

[W]e witnessed [claimant's] increased capacity to show intention, communicate with gesture, facial expression and vocalization, as well as his capacity to move, reach, grasp, exchange objects, crawl and cruise when wooed into playful interaction in a Floor Time [sic] intervention. Based on only a few assessment sessions, his parents and siblings have continued to try to use Floor Time intervention sessions at home with [claimant]. Floor Time sessions have enabled [claimant] to use expanded gestural language and verbal approximation of words. Ordinarily, [claimant] avoids requests to engage in gross or fine motor challenges. However, during Floor Time sessions he is willing to move and to attempt challenging gross and fine motor activity.

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<sup>2</sup> The term "Early Start" refers to early intervention services provided under Part C (20 U.S.C. § 1431 et seq.) of the Individuals with Disabilities Education Act ("IDEA," Pub. L. 108-446) and its administrative regulations (34 CFR Part 303), and under the California Early Intervention Services Act (Gov. Code, § 95000 et seq.) and its administrative regulations (Cal. Code Regs., tit. 17, § 52000 et seq.).

And Caryl Sircus, M.S., P.T., who provided aquatic therapy to claimant, recommended Floortime “to assist [claimant’s] developmental growth,” and to encourage “his social, verbal and gross motor development.”

At a time not established by the evidence, but before claimant’s third birthday, GGRC also began funding oral motor therapy for claimant, under the direction of Sara Rosenfeld-Johnson, M.S. According to Ms. Rosenfeld-Johnson, oral motor therapy is designed to strengthen and train the oral structures of the mouth that are necessary for normal speech. Claimant’s father states that his son, like many children with Trisomy 21, has deficits in the muscles of the cheeks, tongue, and lips that are required for proper articulation. Ms. Rosenfeld-Johnson developed and supervised a training plan for claimant, and claimant’s parents helped claimant perform daily oral motor exercises.

The evidence did not establish whether GGRC and claimant’s family agreed to an individualized family service plan for claimant.

3. In late January or early February 2006, about two months before claimant reached age three, claimant’s father asked GGRC to deactivate his son’s case. GGRC deactivated claimant’s case on March 27, 2006, the day after claimant turned three years old.

4. Early Start services end when an eligible child reaches three years of age. The laws that govern the Early Start program contemplate that, at least three months before a child reaches three years of age, the child’s service coordinator, the child’s family, and a representative of the child’s local education agency will begin planning for the child’s transition to preschool programs under Part B (20 U.S.C. § 1411 et seq.) of IDEA. The evidence did not establish what transition planning activities, if any, occurred in this case.

5. On July 27, 2006, claimant’s father reactivated claimant’s case with GGRC and, on September 13, 2006, claimant’s family and GGRC agreed to an Individual Program Plan (IPP) for claimant. It appears from the IPP that GGRC found claimant eligible for services based upon mental retardation. The IPP states that, in September 2006, claimant’s family was caring for him at home and was not ready to put him in preschool; claimant’s family was providing speech and aquatic therapy to claimant at its own expense.

One of the objectives of the IPP is to improve claimant’s mobility and articulation skills. The IPP recognizes that support is needed from support service agencies for claimant’s speech therapy and aquatic therapy, even though claimant’s family was self-funding both services at the time. The IPP recites that claimant’s family had asked GGRC to fund aquatic therapy, a request to which GGRC later agreed. The IPP does not otherwise mention or refer to Floortime or oral motor therapy.

6. At a meeting with GGRC staff on November 16, 2006, claimant’s father asked GGRC to fund Floortime and oral motor therapy. Felice Weber Parisi, M.D., Director of Clinical Services for GGRC, was present at the meeting. According to a memorandum written by Dr. Parisi, there was a brief discussion concerning claimant’s father’s request:

“[Claimant] is receiving home schooling. [Claimant’s father] does not wish to avail himself of direct educational programming from the school system. I indicated that the Department of Education is mandated to provide educational programming for children over the age of three and that he could request these services from the schools.”

7. On January 21, 2007, several GGRC representatives, including its physician, John Michael, M.D., and its Chief of Social Work Services, Lisa Rosene, met with claimant’s father again to discuss his request for Floortime and oral motor therapy. Claimant’s father reiterated his position that both services had been particularly helpful to claimant. Following the meeting, Ms. Rosene and Dr. Michael recommended that such services be requested from the school district. They concluded that speech therapy is available through the district. They also concluded that Floortime is “a teaching method that allows a child to understand and learn new skills at his own level. This method is designed to improve cognition, skill acquisition and development. As such, it is an educational program . . . .” Ms. Rosene and Dr. Michael recommended that GGRC assist claimant’s parents by referring claimant to the school district and advocating on his behalf, should claimant’s parents desire school district services.

8. Paul Ogilvie, M.S.W., Assistant Chief of Social Work Services for GGRC, testified at hearing. Based upon the reports of Dr. Morrison, Dr. Hong, Dr. Kalmanson, and Ms. Sircus, Ogilvie believes that Floortime is intended to improve claimant’s social engagement, gross and fine motor movement, language development, and receptive speech. In Ogilvie’s opinion, these are educational goals that that would be addressed in an individualized education plan (IEP) developed by claimant’s school district.

Based upon Ms. Rosenfeld-Johnson’s description of oral motor therapy, Ogilvie believes that it is designed to promote speech and language development. In his opinion, this therapy, too, is educational because it promotes a “language outcome.”

9. In claimant’s father’s opinion, neither Floortime nor oral motor therapy is educational in nature. He testified that Floortime is a social adaptive tool that facilitates communication and understanding, not academic skills. Claimant’s father believes that Floortime helps claimant not to feel excluded, and helps him develop living skills. Claimant’s father states that oral motor therapy is directly related to claimant’s Floortime therapy, and that it is not the same as traditional speech therapy. He testified that the family has explored other methods of speech therapy, but only oral motor therapy has been helpful to claimant.

10. Claimant has not requested any services from the school district. Claimant’s father believes that the school district will not fund Floortime or oral motor therapy. He investigated the services the school district provides by calling parents of disabled children and talking to advocacy groups. Based on these inquiries, claimant’s family decided not to initiate an application process with the school district that would be “lengthy, painful, and distressing” and that would “yield questionable results.” Their experience with GGRC has led them to believe that innovative programs are not readily accepted, and they feel the same

will be true of the school district. Claimant's family is open to the idea of claimant receiving services from new therapists, so long as the new therapist provides the same services claimant is receiving now. The family is not interested in traditional services; they have already explored traditional speech therapy, and it did not work. Claimant's father states that this is a critical time in claimant's development, and he does not wish to waste that time on a futile request that will only delay the provision of services to claimant.

## LEGAL CONCLUSIONS

1. Under the Lanterman Act, "the State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (Welf. & Inst. Code, § 4501.) GGRC's obligation to provide services under the Act, however, is not absolute. Services provided under the Act should "reflect the preferences and choices of the consumer," but they must also "reflect the cost-effective use of public resources." (Welf. & Inst. Code, § 4646, subd. (a).) To meet this objective of cost-effectiveness, a consumer's service coordinator is obligated (among other things) to identify those services and supports which can be obtained from "generic agencies," and assist the consumer in obtaining those services. (Welf. & Inst. Code, §§ 4646, subd. (d), 4646.5, subd. (a)(4), 4647, subd. (a), 4659.) A "generic agency" is "any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services." (Welf. & Inst. Code, § 4644, subd. (b).) The Act specifically requires a regional center to pursue funding for services from school districts, and prohibits a regional center from using its funds to "supplant the budget" of a generic agency. (Welf. & Inst. Code, §§ 4659, subd. (a)(1), 4648, subd. (a)(8).)

2. California public school districts are obligated to provide special education and related services to disabled children, at public expense, and are therefore "generic agencies" within the meaning of the Lanterman Act. Under Part B of IDEA, the federal government offers grants to those states which agree to provide "free appropriate education" to all children with disabilities between the ages of 3 and 21, in a manner consistent with federal standards. (20 U.S.C. § 1412.) California has chosen to participate in the Part B program. (Ed. Code, § 56000.) It has adopted legislation to implement an early education program for children with disabilities who are between the ages of three and five years. (Ed. Code, § 56440 et seq.)

In California, a child between the ages of three and five who is mentally retarded, or who has speech or language impairments, and who needs special education or related services because of those impairments, is eligible for special education through his or her public school district. (Ed. Code, §§ 56026, 56440.) The term "special education" means "specially designed instruction, at no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, that may be needed to assist these individuals to benefit from specially designed instruction." (Ed. Code, § 56031.) The "related services" available to the child include language and

speech development and remediation, orientation and mobility instruction, instruction in the home, adapted physical education, and physical and occupational therapy. (Ed. Code, § 56363.) The purpose of the early education program, among others, is to “[p]roduce substantial gains in physical development, cognitive development, language and speech development, psychosocial development, and self-help skills development.” (Ed. Code, § 56441, subd. (b).)

3. Claimant argues, in essence, that GGRC should fund Floortime and oral motor therapy because these services are not educational, that is, that they fall outside the range of special education and related services provided by the school district. It is plain, however, that Floortime is intended to improve claimant’s physical, cognitive, language, and self-help skills development, and oral motor therapy is intended to improve his speech and language development. These goals fall squarely within the purposes of California’s special education program, and the public school system is obligated to provide a broad range services to meet these goals, at no cost to claimant or his family. The Lanterman Act prohibits GGRC from using its funds to supplant the school system’s budget. Claimant must seek funding for Floortime and oral motor therapy from the public school system – a generic agency under the Lanterman Act – before he requests funding for such services from GGRC.

While claimant asserts that the school district will not fund Floortime or oral motor therapy, he has never requested services from the district. The experience of other parents and the reports of advocacy groups are not a reliable guide to the services that may be approved for claimant. Under California’s early education program, special education and related services must meet the unique needs of the individual child, just as services under the Lanterman Act are intended to meet the individualized needs of the consumer. Claimant’s parents will have a significant role in the development of claimant’s IEP, just as they did in the development of his IPP with GGRC: they are members of the IEP team, and the team must take their concerns into account. If claimant’s parents ultimately feel that their views have not been given sufficient weight, they may take the matter to a due process hearing.

As GGRC recognizes, its responsibilities to claimant go beyond directing him to the school district. Claimant is a GGRC consumer, and he is entitled to the direct service coordination activities guaranteed by the Lanterman Act. If claimant’s parents decide to seek services from the school district, GGRC must assist claimant and advocate for him so that he obtains the services and supports necessary to meet his individualized needs. The choice of whether to seek services from the school district, however, is up to claimant’s parents. Their decision not to seek such services does not obligate GGRC to provide services beyond its statutory obligations.

## ORDER

Claimant's appeal from GGRC's decision denying funding of Floortime and oral motor therapy is denied.

DATED: \_\_\_\_\_

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DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

This is a final administrative adjudication decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.